

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

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California Department of Insurance

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA
SAN FRANCISCO**

In the Matter of the Certificates of Authority
of:

File No. NC-2007-00001

COMMONWEALTH LAND TITLE
INSURANCE COMPANY;

LAWYERS TITLE INSURANCE
CORPORATION; and,

TRANSNATION TITLE INSURANCE
COMPANY,

Respondents.

ACCUSATION

(Insurance Code §§790.06, 12401.1,
12401.3(a), 12401.7, 12414.15, 12414.16, and
12414.27);

NOTICE OF NONCOMPLIANCE

(Insurance Code §§790.06, 12401.1,
12401.3(a), 12401.7, 12414.15, 12414.16, and
12414.27);

DEMAND

(Insurance Code §§790.06, 790.08, 12414.14,
12414.15, 12414.16, 12414.27, and 12976);
and

**RIGHT TO ISSUE ORDER TO SHOW
CAUSE**

(Insurance Code §§790.06).

The Insurance Commissioner of the State of California (“Insurance Commissioner”) in his
official capacity alleges that:

JURISDICTION AND PARTIES

1. Respondent, COMMONWEALTH LAND TITLE INSURANCE COMPANY (“COMMONWEALTH”) holds a Certificate of Authority to transact the business of title insurance in the State of California, pursuant to §700 et seq. of the California Insurance Code¹; and,

2. Respondent, LAWYERS TITLE INSURANCE CORPORATION (“LAWYERS”) holds a Certificate of Authority to transact the business of title insurance in the State of California, pursuant to §700 et seq. of the California Insurance Code; and,

3. Respondent, TRANSNATION TITLE INSURANCE COMPANY (“TRANSNATION”) holds a Certificate of Authority to transact the business of title insurance in the State of California, pursuant to §700 et seq. of the California Insurance Code; and,

4. Respondents, COMMONWEALTH, LAWYERS, and TRANSNATION are affiliates of parent company LandAmerica Financial Group, Inc. (“LANDAMERICA”), a Virginia corporation, and the principal underwriters for title insurance policies issued by LANDAMERICA; and,

5. In April 2005, the California Department of Insurance (“Department”) commenced a Targeted Rating and Underwriting Examination of the residential title insurance writings in California of COMMONWEALTH, LAWYERS, and TRANSNATION for the first quarter of calendar year 2005. The examination reviewed a sample of title insurance files to determine the accuracy of the application of the filed rates and applicable discounts by COMMONWEALTH, LAWYERS, and TRANSNATION; and,

6. The Department’s Field Rating and Underwriting Bureau examination report, denominated “As of March 31, 2005,” stated the manner and extent to which noncompliance in

¹ Unless otherwise stated, all references are to the California Insurance Code.

1 Respondents' rating and underwriting practices is alleged, pursuant to California Insurance Code
2 §735.5, and specified a reasonable time thereafter in which such noncompliance may be
3 corrected; and,

4 7. California Insurance Code §12401.1 requires that "Every title insurer, underwritten
5 title company, and controlled escrow company shall file with the commissioner its schedule of
6 rates, all regularly issued forms of title policies to which such rates apply, and every modification
7 thereof which it proposes to use in this state. Every filing shall set forth its effective date, which
8 shall be not earlier than the 30th day following its receipt by the commissioner;" and,

10 8. California Insurance Code §12401.3(a) mandates that "Rates shall not be excessive
11 or inadequate, as herein defined, nor shall they be unfairly discriminatory;" and,

12 9. California Insurance Code §12401.7 provides that "No title insurer ... shall use
13 any rate in the business of title insurance prior to its effective date nor prior to the filing with
14 respect to such rate having been publicly displayed and made readily available to the public....;"
15 and,

16 10. California Insurance Code §12401.8 provides that "Charges in excess of those set
17 forth in a rate filing which has become effective may be made when such filing includes a
18 statement that such charges may be made in the event unusual insurance risks are assumed or
19 unusual services performed in the transaction of the business of title insurance... provided that
20 each person or entity obligated to pay all or any part of such charges consents thereto in writing in
21 advance;" and,

22 11. California Insurance Code §12405 provides, in relevant part, that "No title insurer,
23 no controlled escrow company, and no underwritten title company shall make any rebate of any
24 portion of the fee or charge shown" in its schedule of rates filed with the Commissioner; and,
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1 12. California Insurance Code §12340.7 defines rates as the charge or charges made to
2 the public by a title insurer, an underwritten title company or a controlled escrow company, for all
3 services it performs in transacting the business of title insurance; and,

4 13. California Insurance Code §12414.27 provides, in relevant part, that “no title
5 insurer, underwritten title company or controlled escrow company shall charge for any title policy
6 or service in connection with the business of title insurance, except in accordance with rate filings
7 which have become effective;” and,

8 14. California Insurance Code §790.06 provides for the prosecution of unfair methods
9 of competition and unfair and deceptive acts or practices in the business of insurance that are not
10 defined in §790.03; and,

11 15. California Insurance Code §12414.21 authorizes the Insurance Commissioner to
12 examine every title insurer, underwritten title company or controlled escrow company engaged in
13 the business of title insurance to determine whether such person or entity and every rate and
14 rating system used in the business of title insurance complies with the requirements and standards
15 of Article 5.5 of Division 2, Part 6, Chapter 1 (beginning with Section 12401); and,

16 16. California Insurance Code §12414.16 provides that if, at conclusion of a hearing
17 pursuant to §12414.15, the Commissioner finds that Respondents’ rates, rating plans or rating
18 systems violate the provisions of Article 5.5 of Division 2, Part 6, Chapter 1 (beginning with
19 Section 12401), the Commissioner may issue an order for corrective action. If the violations
20 alleged which have been the subject matter of the hearing are found to constitute willful
21 violations, the Commissioner may suspend or revoke, in whole or in part, the certificates of
22 authority of such title insurer, underwritten title company or controlled escrow company.

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1 **FACTUAL ALLEGATIONS**

2 17. In April 2005, the Department's Field Rating and Underwriting Bureau conducted
3 an examination of COMMONWEALTH, LAWYERS, and TRANSNATION's rating and
4 underwriting practices during the period from January 1, 2005 to March 31, 2005. The
5 examination focused primarily on whether the Companies were accurately applying their filed
6 residential title insurance rates, including any applicable discounts. The examination included a
7 limited review of the rates, rating plans, forms and rules made or adopted by Respondents for use
8 in California, including a limited examination of policy files and related supporting records; and,

10 18. As a result of the examination, the Department identified a high incidence of rating
11 errors resulting in premium overcharges and undercharges. The errors noted included
12 nonconformance with filed rates, incorrectly rated policies, and/or failure to apply applicable
13 discounts; and,

15 19. The total number of residential title policies with rating errors resulting in
16 premium overcharges during the relevant time period and the amount of overcharge will be
17 determined at the hearing.

18 **STATUTORY ALLEGATIONS**

19 20. The facts alleged herein demonstrate that COMMONWEALTH, LAWYERS, and
20 TRANSNATION failed to adhere to their respective filed rates, ratings plans, or rating systems,
21 in violation of California Insurance Code §§12401.1, 12401.3, 12401.7, and 12414.27, and, if
22 willful, constitute grounds for the Insurance Commissioner to suspend or revoke the Certificate of
23 Authority of each such title insurer pursuant to California Insurance Code §12414.16; and,

25 21. The facts alleged herein demonstrate that COMMONWEALTH, LAWYERS, and
26 TRANSNATION have engaged in rating and underwriting practices which constitute an unfair
27 method of competition and/or unfair or deceptive acts or practices in the marketplace affecting
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1 consumers and title insurance competitors in this State that are not defined in California Insurance
2 Code §790.03, in violation of subsection (a) of section 790.06 of the California Insurance Code,
3 and constitute grounds for the Insurance Commissioner to suspend or revoke the Certificate of
4 Authority of each such title insurer pursuant to California Insurance Code §790.08.

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6 22. The Insurance Commissioner hereby notifies COMMONWEALTH, LAWYERS,
7 and TRANSNATION that, based upon the facts alleged herein, COMMONWEALTH,
8 LAWYERS, and TRANSNATION have not charged rates for any title policy or service in
9 connection with the business of title insurance in accordance with rate filings which have become
10 effective pursuant to Article 5.5 (commencing with §12401) of Chapter 6, Part 4 of Division 2
11 and that COMMONWEALTH, LAWYERS, and TRANSNATION have ten (10) days to comply
12 with the provisions of those Sections and to correct such noncompliance in the manner as
13 specified by the Commissioner, or COMMONWEALTH, LAWYERS, and TRANSNATION will
14 be considered to be willfully failing to comply; and,
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16 23. The Insurance Commissioner further notifies COMMONWEALTH, LAWYERS
17 and TRANSNATION that if Respondents fail to make the changes necessary to correct such
18 noncompliance as specified by the Commissioner, a public hearing will be set pursuant to
19 California Insurance Code §12414.15 to consider the allegations herein. If, at the conclusion of
20 the hearing, the Commissioner finds that any rate, rating plan or rating system violates the
21 applicable provisions of the Insurance Code, he may issue an order for corrective action; and,
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23 24. The Insurance Commissioner further notifies COMMONWEALTH, LAWYERS
24 and TRANSNATION that if the noncompliance alleged herein is found to be willful, the
25 Commissioner may suspend or revoke the Certificate of Authority of each such title insurer.

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1 **DEMAND PURSUANT TO**
2 **CALIFORNIA INSURANCE CODE §§790.06, 790.08, 12414.15, 12414.16, 12414.27,**
3 **and 12976**

4 25. As a result of COMMONWEALTH, LAWYERS, and TRANSNATIONS' actions
5 as set forth hereinabove, and pursuant to California Insurance Code §§790.06 and 790.08, and
6 12414.15, 12414.16, 12414.27, and 12976, demand is hereby made to COMMONWEALTH,
7 LAWYERS, and TRANSNATION to cease and desist from failing to adhere to filed rates, rating
8 plans, rules, and rating systems; and,

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10 26. As a result of COMMONWEALTH, LAWYERS, and TRANSNATIONS' actions
11 as set forth hereinabove, and pursuant to California Insurance Code §§790.06 and 790.08, and
12 12414.15, 12414.16, 12414.27, and 12976, demand is hereby made to COMMONWEALTH,
13 LAWYERS, and TRANSNATION to correct the noncompliance in the manner specified by the
14 Commissioner; and,

15 27. Demand is hereby made to COMMONWEALTH, LAWYERS, and
16 TRANSNATION for the imposition of monetary penalties as provided by law and for such other
17 equitable relief, including restitution, as may be necessary to redress Respondents' violations of
18 enumerated California statutory law; and,

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20 28. Demand is hereby made to COMMONWEALTH, LAWYERS, and
21 TRANSNATION for such other and further relief as may be just and proper.

22 **ORDER TO SHOW CAUSE**
23 **PURSUANT TO CALIFORNIA INSURANCE CODE §790.06**

24 29. WHEREAS, the Insurance Commissioner has reason to believe, based upon the
25 facts set forth herein, that COMMONWEALTH, LAWYERS, and TRANSNATION have
26 engaged in and may currently be engaging in an unfair method of competition and/or an act or
27 practice in the conduct of its business that is not defined in California Insurance Code §790.03,
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1 and that the method is unfair and/or the act or practice is unfair or deceptive, pursuant to
2 California Insurance Code §790.06; and,

3 30. WHEREAS, the Insurance Commissioner has reason to believe that a proceeding
4 by the Insurance Commissioner would be in the public interest, he shall bring an Order to Show
5 Cause pursuant to §790.06 of the California Insurance Code, containing a statement of the
6 methods, acts or practices alleged to be unfair or deceptive and the reason why the method of
7 competition or act or practice is alleged to be unfair or deceptive and a notice of hearing thereon;
8 and,
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10 31. WHEREAS, the Insurance Commissioner reserves his right to bring, in the future,
11 such Order to Show Cause against COMMONWEALTH, LAWYERS, and TRANSNATION for
12 the acts alleged herein.

13 WHEREFORE, the Insurance Commissioner prays for the following:
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15 1. An Order to Cease and Desist against COMMONWEALTH, LAWYERS, and
16 TRANSNATION from engaging in unfair methods of competition and unfair and deceptive acts
17 or practices in the business of title insurance that are not defined in §790.03, in violation of
18 California Insurance Code §§790.06; and,
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20 2. An Order to Cease and Desist against COMMONWEALTH, LAWYERS, and
21 TRANSNATION from failing to file each rate and/or failing to adhere to its filed rates, rating
22 plans, rules, and rating systems, in violation of California Insurance Code §§12401.1, 12401.3(a),
23 12401.7, and 12414.27; and,
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25 3. The imposition of Notice on COMMONWEALTH, LAWYERS, and
26 TRANSNATION that if, after conclusion of the hearing, the rating violations which are the
27 subject of the hearing are found to be willful, each non-compliant entity will be subject to the
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1 possible suspension or revocation of its Certificate of Authority pursuant to California Insurance
2 Code §12414.16; and,

3 4. The reservation of the right to bring an Order to Show Cause against
4 COMMONWEALTH, LAWYERS, and TRANSNATION, pursuant to California Insurance Code
5 §790.06 and 790.08; and,
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7 5. The imposition of monetary penalties as provided by law, and for such other
8 equitable relief, including restitution, as may be necessary to redress Respondents' violations as
9 set forth above; and,

10 6. The imposition of such other and further relief as may be just and proper.
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12 Dated: November 13, 2007

STEVE POIZNER
Insurance Commissioner

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15 By: _____s/s_____
16 Mary Ann Shulman
17 Senior Staff Counsel
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